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ATTORNEYS FOR DEFENDANTS
LINKEDIN CORPORATION,
THE BOARD OF DIRECTORS OF LINKEDIN
CORPORATION, AND THE 401(K) COMMITTEE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re LinkedIn ERISA Litigation

Case No: 5:20-cv-05704-EJD

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF LINKEDIN'S MOTION
TO DISMISS PLAINTIFFS' AMENDED
CLASS ACTION COMPLAINT**

Complaint Filed: August 14, 2020
FAC Filed: November 4, 2020

Hon. Judge Edward J. Davila

1 LinkedIn Corporation, the Board of Directors of LinkedIn Corporation, and the 401(K)
 2 Committee (collectively, “LinkedIn”) respectfully request that the Court take judicial notice of
 3 the following documents attached as exhibits accompanying this Request for Judicial Notice and
 4 the Declaration of Sean K. McMahan (“McMahan Decl.”) in support thereof, in connection with
 5 LinkedIn’s Motion to Dismiss (“Motion”) the Amended Class Action Complaint (“Complaint”):

6 **Exhibits 1 through 6:** The statutorily-required disclosures issued to participants in the
 7 LinkedIn Corporation 401(k) Profit Sharing Plan and Trust (“Plan”), dated: October 14, 2014
 8 (Ex. 1); October 13, 2015 (Ex. 2); October 10, 2016 (Ex. 3); September 11, 2017 (Ex. 4);
 9 September 10, 2018 (Ex. 5); September 9, 2019 (Ex. 6).

10 **Exhibits 7 through 9:** The investment and share class change notices issued to Plan
 11 participants dated: November 2015 (Ex. 7); August 2017 (Ex. 8); January 2019 (Ex. 9).

12 **Exhibit 10:** Excerpts from the May 30, 2020 Fidelity Freedom Index Institutional
 13 Premium Fund prospectus.

14 **Exhibit 11:** Excerpts from the February 28, 2018 American Beacon Small Cap Value
 15 Fund prospectus.

16 **Exhibit 12:** A copy of the publicly available American Funds AMCAP R-6 Fund
 17 Summary from December 9, 2020.

18 **I. ARGUMENT**

19 Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are “not
 20 subject to reasonable dispute” and “can be accurately and readily determined from sources whose
 21 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Under Rule 201, “documents
 22 whose contents are alleged in the complaint and whose authenticity no party questions, but which
 23 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion
 24 to dismiss.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by*
 25 *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 1994). Similarly, courts regularly
 26 consider documents that are “incorporat[ed] by reference” into the complaint. *See, e.g., Knievel*
 27 *v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Here, each of LinkedIn’s proffered documents
 28 warrants judicial notice. Indeed, courts presented with similar claims under the Employee

1 Retirement Income Security Act routinely consider the same categories of documents when
2 deciding motions to dismiss.

3 Plaintiffs' primary claim is that the Plan's investments charged excessive investment
4 management fees. Plan participants, including the Plaintiffs, regularly received disclosures
5 setting forth the Plan's investment management fees, and these disclosures are integral to
6 Plaintiffs' claims. Plan participants also received disclosures explaining any changes made to the
7 Plan's investments, and any corresponding changes in investment management fees. The Court
8 can take judicial notice of these documents. *White v. Chevron Corp.*, No. 16-0793, 2017 WL
9 2352137, at *18 (N.D. Cal. May 31, 2017) (taking judicial notice of participant fee disclosures in
10 similar ERISA fiduciary breach lawsuit); *Marks v. Trader Joe's Co.*, No. 19-10942, 2020 WL
11 2504333, *4 (C.D. Cal. Apr. 24, 2020) (taking judicial notice of recordkeeping agreements and
12 Form 5500s in similar ERISA fiduciary breach lawsuit); *Kong v. Trader Joe's Co.*, No. 20-05790,
13 2020 WL 7062395, *3 (C.D. Cal. Nov. 30, 2020) (same); *Patterson v. Morgan Stanley*, No. 16-
14 6568, 2019 WL 4934834, at *11 (S.D.N.Y. Oct. 7, 2019) (same, regarding participant fee
15 disclosures).

16 Plaintiffs also contend that certain investments underperformed their benchmarks.
17 Accordingly, the Court can take judicial notice of those funds' prospectuses and publicly
18 available performance information. *Davis v. Salesforce.com, Inc.*, No. 20-01753, 2020 WL
19 5893405, at *1 n.2 (N.D. Cal. Oct. 5, 2020) (taking judicial notice of "prospectuses for funds
20 referenced in the complaint" and press releases regarding challenged funds); *White*, 2017 WL
21 2352137, at *5 (taking judicial notice of third-party articles and reports regarding challenged
22 funds).

23 The Court should follow these precedents and take judicial notice of the documents
24 submitted herewith, as those documents directly concern Plaintiffs' allegations regarding the
25 investments available to participants in the Plan and the fees associated with those investments.

26 **II. CONCLUSION**

27 For the foregoing reasons, LinkedIn respectfully requests that the Court take judicial
28 notice of Exhibits 1 through 12, which are filed with the McMahan Declaration accompanying

1 this Request for Judicial Notice.

2 Dated: January 4, 2021

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